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**The European Account Preservation Order - what is it and how does it work?**



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## The European Account Preservation Order – what is it and how does it work?

*EU Regulation 655/2014 of the European Parliament and of the Council shall come into force 18 January 2017, setting forth the procedure to be followed for the freezing of bank accounts of counterparties for the purpose of recovering cross-border receivables.*

*The Regulation establishes the legal institution of the EAPO, whose main role is to confer upon the creditor a guarantee that the outstanding amounts will not disappear from the debtor's account until the completion of the trial on the merits of the case, whereby the court would irrevocably find that the debtor owes that amount to the creditor.*

*In short, if you, the reader, find yourself in a situation where you are running a business and have a claim against a company registered outside Romania, I invite you to read further and find out about your options to recover your loss.*

*This article is equally of interest to debtors.*



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## **Conditions for the admissibility of the EAPO**

In order to employ the EAPO option, the creditor must justify, by presenting sufficient evidence, that there is an actual risk of the considerable hindering or hampering of the enforcement of the claim against the debtor if the freezing measure is not taken.

For example, issuing the EAPO is perfectly justified if the creditor fears that the debtor intends to sell its assets or withdraw money from its accounts in order to avoid the repayment of the amounts owed.

Note that the EAPO does not apply to receivables arising out of a legal relationships, such as (i) customs, fiscal, administrative issues or the liability of the state for acts or omissions in the exercise of its public authority, (ii) intellectual property rights arising from the matrimonial regime, (iii) wills and inheritance, (iv) receivables against a debtor undergoing insolvency/bankruptcy procedures, (v) social security or arbitration.

## **Steps available to the creditor**

The EAPO may be requested in order to secure receivables already outstanding and receivables not yet due, as long as the relevant amount can be determined.

In order to freeze the assets, the creditor must file a claim and the court, after accepting the request, allows the creditor to enforce the preservation measure with regard to accounts opened with credit institutions.

A particularly important issue, providing for an additional guarantee of the creditor's success in recovering its receivables, is that this procedure is an ex parte procedure, and the debtor is not notified. Specifically, the order mitigates the risks related to the recovery of the receivables and relies on the surprise effect, ensuring the usefulness of this tool in order to recover receivables from a cross-border debtor.

Also of note is the fact that the exact amount indicated in the EAPO will be preserved and the bank will not be able to seize all amounts in the debtor's accounts.

Another welcomed element is that the order issued in one Member State will be recognized in all other Member States without any special procedure being required and is enforceable in all other Member States without the necessity of an enforcement order.



## **Remedies available to the debtor**

The debtor may challenge the decision of the court issuing the EAPO, demanding its revocation or amendment, invoking either that: (i) the conditions or requirements of Regulation 655/2014 for issuing the order had not been complied with, (ii) the measure established by the order was not notified to the debtor within 14 days from the date of the freezing of the account(s), or that (iii) the frozen amounts exceed the value of the receivables.

The creditor is directly responsible for any damage caused to the debtor in the event of a fault of the creditor.

## **Conclusions**

The practical utility of this legal institution resides in the fact that it will greatly facilitate the possibility of recovering receivables held against companies located in Member States where the creditor does not reside, and that the enforcement of this procedure seems to significantly increase the successful rate of recovery.

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